YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PRINCIPLES OF FAITH**

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<http://vbm-torah.org/archive/faith/19faith.htm>

Shiur #19: The Eternity of Torah, part II

# The Dialectic of Dynamism and Tradition

In last week's *shiur*, I wrote about the dialectic that exists in the Torah between dynamism and tradition which both insists on the Torah being the word of God as revealed at Sinai and encourages *chiddush* – innovative interpretation. There are many ways of negotiating this tension; we have seen some of them in the previous *shiurim*, but the most important thing, in my opinion, is not the particular way that we negotiate it so much as that our way of dealing with it does not destroy the delicate balance between addressing our ever-changing reality and preserving our tradition as a source of real guidance about how to live.

From the perspective of the generations, there is not only no real alternative to preserving this balance; there is no possibility that it will not be preserved. Unless the Torah is going to disappear and with it the covenant that God made with the Jewish people, there must be a way in which the Torah can continue to be relevant without losing its identity. If there is no renewal, no *chiddush*, no ongoing activity of addressing the dynamic human reality, with its cultural, social, technological, intellectual and scientific flux, then the Torah will rapidly become merely a historical artifact that has nothing to say to modern people. Imagine how different our lives are from those of Jews living in 18th century Poland. Our democratic, technology-driven, urban society (to mention only a few categories) would be unrecognizable to them, and yet we aspire to live our lives according to the same Torah that they did. The bridge between these two realities is created by the ongoing interpretation of the Torah. Sometimes the newness of an issue is very apparent: technological change produces halakhic questions that could not have existed before (e.g., electric lights on Shabbat). But sometimes it is more subtle and is not addressed only by *poskim* but by the whole community in the attitudes that it takes. As the state of Israel has become a reality that it is difficult to imagine the Jewish world without, the debate about the legitimacy of Zionism, insofar as it still exists at all, has completely changed in tone and force. The community has accepted the Jewish State as a reality in which it lives. The choices that we have are not abstractions: they are constituted by the possible alternatives that we can imagine. If the Torah is meant to be a guide to a way of living and being then it must address these changing alternatives.

However, the fact that human life is in constant flux and thus the Torah is constantly in need of interpretation should not be understood as an endorsement of a 'liberal' halakhic ideology (or any other ideology). The most extreme *charedi* lifestyle is a no less legitimate attempt to understand what the Torah teaches us today. That is not to endorse a *charedi* lifestyle either, but merely to point out that the results of our attempts to apply the Torah to reality are not foreordained and it is not surprising that different people and different communities have reached different conclusions as to the best way to do so. The traditionalism of *charedi* society does help to highlight the other side of the tension. The necessary responsiveness to a changing world is not a license to lose sight of the heteronymous nature of the Torah. The Torah is, ultimately, God's will for His people and thus the interpretation of it, even while recognizing the changing nature of reality, is fundamentally an act of *listening* rather than speaking. This listening not only can, but must, be creative, but it nonetheless is not a free for all in which we simply couch what we want to do in the Torah's language. If the interpretation of Torah is not merely a game, it must involve sacrifice and the acceptance of constraints even when that acceptance is challenging or puts us at odds with the mores of the prevailing culture. The *charedi* world is particularly sensitive to this aspect of dialectic and there is much to admire in their willingness to make sacrifices to live in accordance with their understanding of the Torah.

# Halakhic Dialaectic: The Case of the Heretic

How the dialectic between dynamism and traditionalism is continuously both resolved and preserved is the ongoing story of *Torah she-be'al peh*. In the following, I want to briefly trace the development of a set of ideas through the history of *Halakha*. One way of thinking about this is in terms of *halakhic* *change*, but the great Sages who participated over the generations in the discussion did not conceive of what they were doing as that. Rather they were interpreting the Torah in the manner that they conceived to be correct given changing circumstances. As we will see, there are some very great *chiddushim*, innovations, in this process, yet the connection to tradition is always maintained. The law is not abrogated or rejected so much as conceived of in new ways.

The *Halakha* has an extremely harsh attitude towards the heretic. The *Tosefta* states:

The non-Jew (idol worshipper),[[1]](#footnote-1) the shepherds and those who raise sheep and goats,[[2]](#footnote-2) are not raised but not lowered. The heretics, the apostates and the informers are lowered and not raised.[[3]](#footnote-3)

The terms “raised” and “lowered” refer to a pit. The first group is not to be actively lowered (i.e., pushed) into a pit (and left to die) but one should not raise them up out of one. The second group should be actively “lowered.” The Gemara, in discussing the definition of a heretic, distinguishes between a person who commits sins of appetite (*oveir aveirot le-tei’avon*) and one whose sins are an act of rebellion against God (*oveir aveirot le-hakh'is*). Only the latter is subject to the stricter ruling. The Rambam in the *Mishneh Torah* records the above ruling and explains that the category of heretics etc. includes sinners out of rebellion, idol worshippers, those that do not believe in the Torah or in prophecy, and those who deny the authority of the Oral Law. [[4]](#footnote-4) All of these, according to Rambam,

... it is a commandment to kill: if one has the ability to kill them with a sword in public, one should do so, and if not, one should approach them with trickery until he brings about their death...[[5]](#footnote-5) [[6]](#footnote-6)

Despite the above law, Rambam did not think that the vigilante execution of heretics and sectarians was appropriate to the Karaites of his own day: He writes:

When is this the case (that one should kill the heretic)? [This law applies] to a man who denies the Oral Law [based upon] his own thoughts and matters as they appear to him; who follows his own foolish opinion and the waywardness of his heart - the *original* deniers of the Oral Lawlike Tzadok and Baytus, as well as all of those who strayed after them. However, the children and grandchildren of those who strayed, who were deceived by their parents - those who were born among the Karaites and raised according to their beliefs - they are like a child taken prisoner [by idol worshippers] and raised by them. Such a one is not quick to accept the ways of the commandments for it is as if he was forced (not liable), even though he has heard that he is a Jew and he has seen the Jews and their religion. He is not liable since he was brought up according to their mistake - so to those who follow the ways of the mistaken Karaites. Therefore it is correct to bring about their repentance and to attract them in peaceful ways until they should return to the strength of the Torah.[[7]](#footnote-7)

Rambam succeeds in not applying the rule of a heretic to the Karaites of his day by defining a heretic not according to his beliefs but rather according to his liability for those beliefs. The children of heretics are to be regarded as “child prisoners” who know not what they do and therefore should not be treated so harshly. This definition is not explicit (to my knowledge) anywhere in the sources that precede Rambam. It was simply apparent to him that the Torah could not require such a harsh attitude towards Jews who could not be expected to know better. Even so, the principle remains, and first generation heretics are still to be treated harshly since they do bear liability for their abandonment of the faith.

This attitude remained the dominant halakhic attitude into the 20th century, at least in theory if not in practice.[[8]](#footnote-8) Despite this, it is hard to imagine a modern halakhic authority who would advocate such attitudes toward secular Jews, even toward one “who denies the Oral Law [based upon] his own thoughts and matters as they appear to him... the *original* deniers of the Oral Law.” Various devices have been used to explain why this law is not to be applied in a modern reality.[[9]](#footnote-9) Most striking of these is the radical approach of the Rabbi Avraham Yeshayahu Karelitz, known as *the Chazon Ish*:

It appears that there is no law of “lowering” except in a time that His Providence is revealed, as in the time when miracles were common... in a way that Divine Providence was evident to all. Under such circumstances, heresy was a sign of particularly perversity of corrupt desires and lawlessness. Then, the destruction of the wicked is required, as everyone knew that leading the generation astray brings suffering to the world... However, in a time when Providence is hidden, when faith has been cut off from the simple people, the act of ‘lowering’ is not a protection against lawbreaking but an addition to it - as it appears in their [the people’s] eyes to be an act of destruction and violence, God forbid. Since our intention is to repair, this law does not apply in a time that it does not do any good, and we should cause them to repent with bindings of love...[[10]](#footnote-10)

According to the *Chazon Ish* the point of the law of “lowering and not raising” is fundamentally a pragmatic one of defending the faith from heresy. When this purpose is not served, but rather harmed by the implementation of the law, then such implementation is abrogated. The result is the *de facto* (but not *de jure*) cancellation of a law recorded in the Talmud and codified both in Rambam’s *Mishneh Torah* and in the *Shulchan Arukh*.[[11]](#footnote-11)

The *Chazon Ish* makes no bones about the fact that his interpretation is driven by moral and pragmatic considerations. Is such an interpretation a change in the Torah? The *Chazon Ish* certainly did not think so! It is likely that no one thought (or dared) to understand the law of “lowering” in this way before the *Chazon Ish*. Does that mean that it is intellectually dishonest to believe the *Chazon Ish* that that is the true intent of the law? The Torah has always had a looser, richer understanding of ‘meaning’ than a strictly literal, historical one. The determination of the meaning of the Torah is not limited by historical methodology - it is both valid and appropriate that moral concerns play a role in the interpretation of the Torah. What might have been deemed an appropriate response to the threat posed to the community by heretics and the like in the 3rd century C.E. (roughly the date of the *Tosefta*) was understood by the Rambam to be appropriate only in theory and not in practice. In the 20th century, in a period in which most Jews do not keep the Torah faithfully, the *Chazon Ish* conceived such harshness to be a moral and practical impossibility.

# Negotiating the Tension: The Changing Role of Women

Above I claimed that ultimately, the continuing integrity and relevance of the Torah are ensured by the *berit*, the covenant between God and the Jewish people made at Sinai. It is an article of faith, in the sense of trust, that God will not breach this covenant and allow the Torah to collapse into either dynamic chaos or petrified irrelevance. The difficult part, however, is to know how to negotiate this dialectic in “real time.” How do we know what the Torah instructs us to do right now, given our present reality? One place in which this issue has become very topical is with regard to the way that modern women and men live and the appropriate ways for them to interact. I cannot hope to address this large and important issue in any detail but a few remarks are in order.

Though many people are uncomfortable with identifying themselves as feminists,[[12]](#footnote-12) some 'feminist' attitudes have become so embedded in modern moral sensibility that their feminist origins have become all but invisible. Who today, even in the *charedi* world, questions women's right to vote? Yet only a hundred years ago women's suffrage was extremely controversial. Likewise the ideas that women should get equal pay for equal work, or that a woman can hold a position of responsibility in the public sphere, are very hard to deny, though they were far from obvious not very long ago. Driving (or perhaps being driven by?) these social changes is the ideological position that women are fundamentally *equal* to men. Even proponents of maintaining traditional gender roles accept this principle, and argue that traditional roles are not expressions of any difference in women's value as human beings but rather expressions of different tasks and abilities. To many of us, the basic equality of women and men is stated explicitly in the Torah, which describes God creating male and female humans in His image (*Bereishit* 1:27). Yet this equality has not been obvious to previous generations.[[13]](#footnote-13) So here is an issue in which the social and cultural milieu has changed significantly to the extent that certain seemingly new ideas have become obvious or even self-evident. How does this change impact how we understand the Torah?

If the feminist sensibility embodied in the notion that women and men are fundamentally equal is more than a passing fad, and it difficult to imagine that it is not, it is likely that the community of the *mesora*, of the tradition, will discover that some of the values expressed by feminists are indeed those of the Torah and should be pursued accordingly. Others aspects of this worldview may be turn out to be in opposition to the values of the Torah and as such should be rejected. Still other matters may remain in the realm of the permissible but not obligated. Even the *halakha* cannot be determined once and for all since the basic categories that the *Halakha* works with depend so essentially on context (recall the concept of heretic in the previous section). Every generation needs to determine these things anew, in accordance with its own understanding of the context.

The project of applying the Torah to our ever-changing reality is no simple one. In what I have written above I have emphasized the dynamism of *Torah* *she-be'al peh* in its ability to make the Torah relevant to all generations. There is another side to this picture that cannot be underestimated. *Torah she-be'al peh* is a *mesora*, a tradition and not merely an ideology or a set of values. This *mesora* includes practices, customs and laws, each with its own history, and the point of departure of any attempt to apply the Torah to our own reality is not neutral with regard to these. On the contrary, the working assumption is always that accepted practice is not merely legitimate but correct and any attempt to critique it or to change it must take that into account. The burden of proof is always on someone who wants to do things differently. In this sense the *Torah she-be'al peh* is deeply conservative and this resistance to change is essential if the Torah is going to maintain its integrity. There are many forces in the world that push up against the tradition – some are partially integrated into it and enrich it (e.g., Greek philosophy) others are rejected (e.g., secularism).

How is this done? How should the Torah accommodate changes like the different role of women in society? It would be pointless for me detail a set of prescriptions or something like that – they would only be my opinion and no one would be bound to follow them. A few things seem clear: first of all, the believer in *Torah min ha-Shamayim*, is not an outsider looking at the Torah as a set of objective texts. For him or her, the Torah is the source of moral vision, the guide to living-in-the-world. When what we understand the Torah to say conflicts with our most basic moral sensibilities, it is not only appropriate but essential that that challenge drive us to think again, to ask questions, to inquire further. Not every question has an answer, at least not right away, but there is value to honestly grappling with a problem even if no resolution is reached.

Secondly, it is clear that not everyone is equal in interpreting the Torah. The principle of *emunat chakhamim* not only entails that we trust the great scholars of previous generations but also that we defer to the great scholars of our own. Great knowledge of Torah is a central pillar of interpretive authority.

Thirdly, the scholars do not work in a vacuum. The community as a whole in its practices, customs and assumptions plays a role, both in determining who counts as an authority and in establishing what options are considered legitimate.

Finally, and most importantly, the essence of the belief in revelation is the acceptance of heteronomy: the final moral arbiter is not each individual but God Himself. The *mesora* of *Torah she-be'al peh*, in all its complexity, is the best way we have for determining God's will. That is a principle of faith if anything is.

1. The Gemara in *Avoda Zara* 26a glosses “the idol worshipper” and the context indicates that the above law does not apply to a non-Jew who is not an idol-worshipper. The text of the Gemara has other changes as well, yet they do not significantly affect the point made here. There is a further question as to the extent to which we are meant to regard this instruction as a kind of halakhic hyperbole. There does not seem to ever have been a time when the simple meaning of this *halakha* was actually practiced. [↑](#footnote-ref-1)
2. Shepherds were considered to be chronic thieves in that they graze their flocks on land belonging to others. See *Tosafot* s.v. *ve-ha’ro'im*, *Avoda Zara* 26a for an explanation as to why this is so. [↑](#footnote-ref-2)
3. *Tosefta Bava Metzia* 2:33 (Lieberman). [↑](#footnote-ref-3)
4. *Hilkhot Rotzeach* 4:10-12, *Hilkhot Mamrim* 3:1-2. [↑](#footnote-ref-4)
5. *Hilkhot Rotzeach* 4:10 (my translation). [↑](#footnote-ref-5)
6. This ruling is the extreme extension of an attitude that heretics are not regarded as Jewish - they are not neighbors as regards the commandment to “Love your neighbor as yourself,” one is not obliged to return their lost objects, perhaps one can lend to them with interest, etc. [↑](#footnote-ref-6)
7. *Hilkhot Mamrim* 3:3 (my translation). [↑](#footnote-ref-7)
8. See for example, *Mishna Berura,* 329*:*9. [↑](#footnote-ref-8)
9. See for example, *Iggerot Moshe* OC IV, 91:6, who expands upon the Rambam’s definition to include those influenced not just by their parents but also by their surroundings. [↑](#footnote-ref-9)
10. *Sefer Chazon Ish,* YD 13:16 (my translation). [↑](#footnote-ref-10)
11. YD158:2. [↑](#footnote-ref-11)
12. I am not one of them. [↑](#footnote-ref-12)
13. I do not have space to argue this point but there are sufficient derogatory remarks made about women in the tradition to pose a challenge. It is questionable whether the claim that men and women are fundamentally equally was even intelligible to pre-modern people. The discourse that makes equality into a central moral category is a product of the Enlightenment. [↑](#footnote-ref-13)